
UTAH LABOR COMMISSION

JOSE RIVERA,

Petitioner,

vs.

**STRATEGIC STAFFING, INC. and
WORKERS COMPENSATION FUND,**

Respondents.

**ORDER AFFIRMING
ALJ'S DECISION**

Case No. 05-0868

Strategic Staffing, Inc. and its insurance carrier, Workers Compensation Fund, (referred to jointly as "Strategic Staffing") ask the Utah Labor Commission to review Administrative Law Judge Holley's award of temporary total disability compensation to Jose Rivera under the Utah Workers' Compensation Act, Title 34A, Chapter 2, Utah Code Annotated.

The Labor Commission exercises jurisdiction over this motion for review pursuant to Utah Code Annotated § 63G-4-301 and § 34A-2-801(3).

BACKGROUND AND ISSUE PRESENTED

Mr. Rivera claims workers' compensation benefits for a work accident that occurred on February 16, 2005, causing injury to his back. Strategic Staffing accepted liability for Mr. Rivera's claim and paid various benefits, including temporary total disability compensation through February 28, 2005. Following an evidentiary hearing, Judge Holley ordered Strategic Staffing to pay additional temporary total disability compensation from March 1 to May 19, 2005.

In its motion for review, Strategic Staffing contends that (1) Mr. Rivera was capable of performing light duty work after February 17, 2005, and should have been denied temporary total disability compensation after that date, or alternatively, that (2) the Commission should appoint a medical panel to determine the date that Mr. Rivera could return to light duty work.

FINDINGS OF FACT

The Commission finds the following facts material to the issues raised in Strategic Staffing's motion for review.

Mr. Rivera injured his back at work on February 16, 2005. Dr. Merkely, the Workmed doctor who saw Mr. Rivera on February 17, 2005, released him to light duty work that same day. Strategic Staffing's medical consultant, Dr. Marble, later concurred with Dr. Merkely's opinion. Dr. Haggart, Mr. Rivera's chiropractor, released Mr. Rivera to sedentary work after February 27, 2008, but with so many caveats as to offer no real guidance regarding Mr. Rivera's ability to perform light

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duty work. On the other hand, Dr. Rothfeder began treating Mr. Rivera by March 2005. Based on his actual observations of Mr. Rivera's condition, supported by x-rays, an MRI and radiological study, Dr. Rothfeder concluded that Mr. Rivera was unable to return to light duty work until May 19, 2005.

Strategic Staffing paid temporary total disability compensation to Mr. Rivera through February 28, 2005. On March 7, 2005, Strategic Staffing made sedentary work available to Mr. Rivera.

DISCUSSION AND CONCLUSION OF LAW

Section 34A-2-410 of the Utah Workers' Compensation Act entitles an injured worker to temporary compensation until the worker reaches medical stability, or until the employer provides light duty work that is within the injured worker's medical capabilities. In this case, the question before the Commission is the date on which Mr. Rivera was capable of performing light duty work.

Strategic Staffing argues that the opinions of Dr. Merkley, Dr. Marble and Dr. Haggart show that Mr. Rivera was able to perform light duty work by February 27, 2008, at the latest. However, the Commission finds Dr. Rothfeder's contrary opinion to be persuasive. Dr. Rothfeder actually treated Mr. Rivera and had the benefit of various diagnostic tools and tests. Dr. Rothfeder released Mr. Rivera from all work until May 19, 2005. The Commission accepts Dr. Rothfeder's opinion and finds that Mr. Rivera was not able to perform light duty work until May 19, 2005. Mr. Rivera is therefore entitled to temporary total disability compensation through that date.

Strategic Staffing also argues that the doctors' conflicting opinions of the date that Mr. Rivera was able to perform light duty work creates a significant medical issue that should be referred to a medical panel. Specifically, Strategic Staffing relies on the Commission Rule R602-2-2(A)(3), which defines "significant medical issues" as including "[c]onflicting medical opinions as to the temporary total cutoff date which vary more than 90 days. . . ." Assuming for purposes of discussion that the referenced rule applies to conflicting light duty opinions, the Commission notes that light duty work was not actually available to Mr. Rivera until March 7, 2005. It has been established that he was able to perform light duty work by May 19, 2005. Consequently, less than 90 days of temporary total disability compensation are at issue in this case. For that reason, the referenced rule does not require appointment of a medical panel.

In summary, the Commission finds that appointment of a medical panel was not warranted in this proceeding, and that Mr. Rivera was not capable of performing light duty work until May 19, 2005. Mr. Rivera is therefore entitled to temporary total disability until that date.

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ORDER

The Commission affirms Judge Holley's decision. It is so ordered.

Dated this 26th day of November, 2008.

Sherrie Hayashi
Utah Labor Commissioner

NOTICE OF APPEAL RIGHTS

Any party may ask the Labor Commission to reconsider this Order. Any such request for reconsideration must be received by the Labor Commission within 20 days of the date of this order. Alternatively, any party may appeal this order to the Utah Court of Appeals by filing a petition for review with the court. Any such petition for review must be received by the court within 30 days of the date of this order.

